UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

MONDELĒZ GLOBAL, LLC

and Case 13-CA-170125

BAKERY, CONFECTIONERY, TOBACCO WORKERS & GRAIN MILLERS LOCAL UNION NO. 300, AFL-CIO-CLC.

RESPONDENT'S BRIEF TO THE ADMINISTRATIVE LAW JUDGE

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TABLE OF CONTENTS

Page

I. INTRODUCTION

This case concerns the Union's allegation that the Respondent violated Section 8(a)(5) of the National Labor Relations Act ("NLRA") by purportedly failing to furnish information requested by the Union. The information request at issue was set forth in a letter dated January 27, 2016 and arose out of a grievance filed by the Union against the Respondent on December 11, 2015 alleging that the Respondent's decision to invest in four new manufacturing lines in its Salinas, Mexico plant was in violation of Article 1 (Recognition), Article 2, Section 5 (Membership), Article 39 (Successorship), and Article 41 (Miscellaneous Clauses – Product Sourcing, Outsourcing, and Subcontracting) of the parties' collective bargaining agreement ("the transfer of work grievance").

The Respondent has met its obligations under Section 8(a)(5) of the Act by either providing the requested information, asserting legitimate objections thereto, or offering to produce certain requested information pursuant to a proposed confidentiality agreement. From the beginning, the Respondent articulated its reasons for not providing certain information and further articulated its concerns with providing certain other ostensibly relevant but confidential and proprietary information. The Union, however, has failed to establish how the exact number of the Salinas workforce, the Salinas labor agreement, or how information on when and how the Salinas labor organization was selected is relevant to its transfer of work grievance. Further, ostensibly relevant information, but with respect to which the Respondent has expressed confidentiality concerns, has been offered by the Respondent pursuant to a proposed confidentiality agreement over which the Respondent has offered to bargain.

Accordingly, based on the stipulated record and the legal arguments that follow, the Respondent asks the Administrative Law Judge to dismiss the Complaint in its entirety.

II. STATEMENT OF THE CASE

The initial charge in this proceeding filed by the Union and dated February 22, 2016, alleged the Respondent failed and refused to bargain in good faith with the Union as the collective bargaining representative of its employees by failing to furnish information requested by the Union in a letter dated January 27, 2016. (Jt. Ex. 1). On October 28, 2016, the Board issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, consolidating Cases 13-CA-170125, 13-CA-176539, and 13-CA-177235. (Jt. Ex. 2). An Order severing Cases 13-CA-176539 and 13-CA-177235 from the instant case was issued on February 7, 2017. The parties settled the charges in the former two cases, leaving only the instant case for hearing. An Order postponing the hearing indefinitely for settlement purposes was issued on February 8, 2017. (Jt. Exs. 5–6). The parties agreed that the matter could be heard on a stipulated record. The proposed stipulation was filed on April 28, 2017 and approved by the Administrative Law Judge on May 3, 2017.[1]

III. STATEMENT OF FACTS

A. The Union's December 11, 2015 Transfer of Work Grievance

On December 11, 2015, the Union filed a grievance alleging the transfer of bargaining unit work from the Chicago, Illinois plant to the Salinas, Mexico plant violated the following provisions of the collective bargaining agreement then in effect (the "CBA"): Article 1 (Recognition); Article 2, Section 5 (Membership); Article 39 (Successorship); and Article 41 (Miscellaneous Clauses – Product Sourcing, Outsourcing, and Subcontracting). (R. at ¶ 10; Jt. Ex. 10). The CBA, in effect from February 29, 2012 through February 29, 2016, states in pertinent part as follows:

[1] References to the stipulated record are set forth as "R at ¶___". References to the exhibits in the stipulated record are set forth as "Jt. Ex.___".

ARTICLE 1 – RECOGNITION

Local #300 of the BAKERY, CONFECTIONERY, TOBACCO WORKERS' & GRAIN MILLERS INTERNATIONAL UNION, A.F.L.-C.I.O. is the sole collective bargaining agency for the employees of the Company, and all other employees subject to this Agreement who are now or may be hereinafter employed in the classifications listed in the Classification and Rate Schedules attached hereto, for the following locations: Chicago Bakery; Chicago Distribution Center; Addison Sales Branch.

ARTICLE 2 – MEMBERSHIP

Section 5 The Company and the Union agree that, in accordance with applicable laws, there shall be no discrimination against any qualified employees on the basis of race, color, religion, sex, age, national origin, mental or physical disability, or because an employee is a Veteran of the Vietnam Era.

ARTICLE 39 – SUCCESSORSHIP

The agreement shall be binding upon all parties, their successors, administrators, executors, and assigns. It is agreed that in the event the company sells, leases, transfers or assigns a manufacturing facility, the Company will require the purchasers, as a condition of sales and as part of the sale agreement, to assume and be bound by this collective bargaining agreement. Additionally, the purchasers must, as a condition of sale, be required to recognize the Bakery, Confectionery, Tobacco Workers & Grain Millers International Union as the bargaining representative for the employees within the existing unit.

ARTICLE 41 – MISCELLANEOUS CLAUSES

Product Sourcing

The parties recognize the excellent progress that Nabisco has made in repatriation of products since the Labor-Management Conference in 1994 in San Antonio, Texas. The parties will continue to foster the vision matrix, which will enable the Company to consider opportunities for additional repatriation. The parties further acknowledge that the Company retains the right to determine where products are *produced.*

Outsourcing

The BCTGM International Union and the Company agree to meet and discuss opportunities for additional repatriation of Nabisco products.

Subcontracting

The Company and Union agree that the first priority of our in-plant maintenance employees in our Philadelphia, Fair Lawn and Richmond sites is to maintain the operation of these facilities in a timely, efficient and effective manner.

It is understood and agreed that the decision to subcontract shall be made by management, and that such decisions will be discussed with the Local Union at a time in advance of the actual subcontract.

Management shall inform the Local Union's designated representative whenever any work is to be subcontracted and will discuss with the Local Union the reasons for such subcontracted work. The Company also agrees it will not subcontract any work provided it then has sufficient manpower, skills, ability and equipment in the plant to timely and efficiently perform the work involved, keeping in mind the first priority of our maintenance employees is the maintenance of our equipment. The Company recognizes the Union's rights on the issue of subcontracting.

(Jt. Ex. 8).

B. The Union's January 27, 2016 Information Demand and Respondent's Responses Thereto

In its January 27 letter, the Union requested the following information for the transfer of work grievance:

1. Who is the "Employer" for the Salinas workers?
2. How many employees will be utilized at the Salinas operation to perform the Local bargaining unit work which the company intends to transfer?
3. Have any of those employees been hired, and, if so, when were they hired and the number of such employees?
4. Are the employees who will be performing the transferred bargaining unit work covered by a collective bargaining agreement; and, if so, the Union requests a copy of the agreement.
5. Are the employees who will be performing the transferred bargaining unit represented by a labor organization in connection with their hours, wages and working conditions and if so was the labor organization selected by the employees? If the labor organization was selected by the employees when and how did that occur [sic?]. If the employees did not participate in the selection of the labor organization when and how was the selection made? If there is a labor organization in place, has the Mexican government certified the organization as the representative of the employees and if so, the Union requests a copy of the certification?

6. What is or will be the hourly wage and benefits, if any, of the Salinas employees who will be performing the transferred bargaining unit work function?

7. When were the production facilities to be used for the production of the transferred bargaining unit work ordered from the suppliers? The Union requests copies of the orders.

8. When were the production facilities installed or will be installed at the Salinas site?

(R. at ¶ 11; Jt. Ex. 9).

The Respondent has replied to each item in the Union's January 27 information demand by either providing the requested information, asserting legitimate objections thereto, or offering to produce certain requested information pursuant to a proposed confidentiality agreement it has been willing to bargain over. Upon receipt of the January 27 information demand, the Respondent sent a letter dated January 29, 2016 wherein it acknowledged receipt of the Union's requests and in an e-mail dated February 5, 2016 provided a timeframe for the Respondent's response. (R. at ¶ 13–14; Jt. Exs. 10–11). Within that estimated timeframe, in a letter dated February 17, 2016, the Respondent addressed each item in the January 27 information demand, providing some of the information requested and objecting to certain requests for which the Respondent sought an explanation of their relevance to the transfer of work grievance. (R. at ¶ 15; Jt. Ex. 12).

Specifically, in the February 17, 2016 letter, the Respondent provided a full response to item 1, identifying the employer for the Salinas workforce, and a response to item 6, referring to prior correspondence from the Respondent to the Union wherein it identified the average hourly wage and total compensation package of the Salinas workforce. (Jt. Ex. 12). In response to item 8, the Respondent stated "that from August 2015 to December 11, 2015 the Company invested millions of dollars to construct and operationalize the four new lines of the future in Salinas." (Jt. Ex. 12). Where the Respondent did not provide the requested information, the

Respondent asserted objections on the basis of relevance and confidentiality. The Respondent objected on the basis of relevance to the Union's request for a copy of the Salinas labor agreement and the information relating to when and how the labor organization representing the Salinas workforce was selected. (Jt. Ex. 12). Despite its objections, the Respondent provided the name of the Salinas labor organization. (Jt. Ex. 12). The Union responded to the Respondent's February 17 letter on March 11, 2016 furthering its demand for the information encompassed by the requests in dispute. (Jt. Ex. 13). With respect to item 4, seeking a copy of the Salinas labor agreement, without providing any rationale, the Union stated that it was entitled to that information in order to evaluate and process the pending transfer of work grievance. (Jt. Ex. 13). Regarding when and how the Salinas labor organization was selected, the Union stated that it "has the right to this information in order to determine whether the Company is in compliance with the requirement that workers be able to select their bargaining representative in a free and fair manner under the North American Agreement on Labor Cooperation ("NAALC"), a side agreement to the North American Agreement on Free Trade ("NAFTA") signed by the United States, Mexico, and Canada." (Jt. Ex. 13). The question of whether the Company was in compliance with the NAALC, however, had no apparent bearing on any of the contractual provisions at issue in the grievance. Moreover, it was not until April 6, 2016, that the Union filed a request with the United States Department of Labor's Office of Trade and Labor Affairs ("OTLA") seeking, *inter alia*, an investigation of the Respondent's alleged violations of the labor principles of the NAALC. (Jt. Ex. 14).

On May 31, 2016, the Respondent replied to the Union's March 11 letter providing additional responsive information and further explaining its objections to certain of the Union's requests. (Jt. Ex. 16). The Respondent provided answers to items 2 and 3 – it explained the

uncertainty of being able to provide the requested number of Salinas employees working on the new lines but provided the date when recruiting began as well as the date of hire of the first employee at the Salinas plant hired for the four new production lines. (Jt. Ex. 16). The Respondent further explained that the "exact number of employees who will work on the four new lines of the future is unknown, since the amount of production may change over time and the ability of employees to transfer to and from already existing lines in the Salinas plant will cause the number of employees to fluctuate." (Jt. Ex. 16). The Respondent further objected to the Union's continued request for the Salinas labor agreement, asserting that the Union's response "failed to demonstrate how the existence or non-existence of a collective bargaining agreement covering the Salinas employees is relevant to any of the provisions of the parties' contract." (Jt. Ex. 16).

In this response, the Respondent additionally noted that the Union's reliance on Article 39 (Successorship) of the CBA was misplaced as its explicit language deals exclusively with the sale, lease, transfer or assignment of a manufacturing facility and not (as in this case) a transfer of bargaining unit work or a decision to invest. (Jt. Ex. 16). The Respondent also asserted that "[h]ow a union came to represent workers in Salinas as well as the Company's compliance with NAFTA or the NAALC is not within the jurisdiction of an arbitrator or the National Labor Relations Board." (Jt. Ex. 16). Still, and without waiving its relevancy objections, the Respondent confirmed that certain manufacturing employees at the Salinas plant are covered by a labor agreement as well as the effective date of the labor agreement covering those employees. (Jt. Ex. 16). With respect to items 7 and 8, the Respondent provided the date in which the Respondent began purchasing the equipment for the four new manufacturing lines, including the ovens, and added that the equipment was kept in storage until the placement

decision was made. (Jt. Ex. 16). The Respondent objected to the production of the purchase orders for the equipment on the basis of confidentiality and proposed discussing an appropriate confidentiality agreement. (R. at ¶ 16; Jt. Ex. 16).[2]

On June 2, 2016, the Union replied to the Respondent's May 31 letter arguing that "the information requested is relevant to whether the company is in compliance with the NAALC treaty." (Jt. Ex. 17). The Union also stated that because the effective date of the Salinas labor agreement was earlier than the first hire date, the Salinas employees could not have participated in the selection of a bargaining representative. (Jt. Ex. 17). On that same day, June 2, 2016, the OTLA responded to the Union's April 6 filing with that agency stating that it was declining to review the Union's submission. (Jt. Ex. 15.).

On August 9, 2016, the Respondent replied to the Union's June 2 letter again explaining that the number of Salinas employees working on the four new production lines could not be identified with certainty; the Respondent again reasserted its objection to the Union's request for a copy of the labor agreement because the Union had yet to establish the relevance of that request to the transfer of work grievance. The Respondent further argued that whatever NAALC issues existed relative to the date of the labor agreement were not only irrelevant to the grievance issue but also to the NAALC question itself since the Union's NAALC submission had been denied. Moreover, whatever relevance the date of the labor agreement had to any issue that existed was undermined by the fact that aside from the NAALC issue the Union had raised there was no apparent connection between that question and any of the contract provisions at issue in

[2] In its February 17, 2016 response (Jt. Ex. 12), the Respondent had also objected to the vagueness of the term "production facilities" in Union request numbers 7 and 8. The Union's March 11 letter (Jt. Ex. 13) did not answer that objection directly but provided enough information so as to allow the Respondent to understand that the Union's requests related to the production lines and their ovens.

the grievance.[3] The Respondent again offered to produce the information in items 7 and 8, including the purchase orders and information on when the ovens were placed in storage and where, pursuant to a confidentiality agreement, a draft of which the Respondent enclosed for the Union's consideration. (Jt. Ex. 18). Since this communication in August 2016, there is no record of any further justification by the Union for the information in its January 27 information demand.

C. Respondent's Offer to Produce Certain Confidential and Proprietary Information Pursuant to a Proposed Confidentiality Agreement

From about August 9, 2016 to the present, the Respondent and the Union negotiated terms of a confidentiality agreement under which the Respondent would release certain information requested in the Union's January 27 information demand. (R. at ¶ 22–27). To date, the parties have not executed a confidentiality agreement for the information that is the subject of the instant charge. (R. at ¶ 22–27). The Respondent has established that it deems information contained in the Salinas labor agreement to be highly confidential and proprietary since it contains information related to the labor costs for manufacturing the Respondent's product as well as information from which certain aspects of the Respondent's manufacturing methods in the Salinas plant can be determined. (R. at ¶ 22; Jt. Ex. 19). Further, information disclosing the number of employees employed in manufacturing positions also reveals the nature and extent of the Salinas plant's production process, which the Respondent deems proprietary. (Jt. Ex. 19). Information regarding the formation of the Salinas union is also deemed a matter of confidential and proprietary interest because of the labor relations strategies

[3] In its response, the Respondent also opined that whether any employee had input into the question of representation (which was the Union's asserted relevance over the date of the labor agreement) was no different from new hires at the Chicago plant and whether they had any input into the question of Union representation there (Jt. Ex. 18).

associated with the union recognition process under Mexican labor law. Such strategies also include whether to invoke specific legal rights under Mexican labor law. (R. at ¶ 22; Jt. Ex. 19).

Specifically, the Respondent has a proprietary interest in preserving the confidentiality of information related to, and documents showing, the wage and benefits received by the Salinas workforce as well as information regarding the number of employees in Salinas and when and how the union in Salinas was selected. (R. at ¶ 22; Jt. Ex. 19). Moreover, as indicated in the Respondent's August 9 letter, the Union and its International Union represent a number of the Respondent's competitors for whom the wages, benefits, conditions of employment, methods of production and the process by which the Salinas union was recognized would be of interest, particularly for any one of those competitors that may be seeking to open a manufacturing facility in Mexico. (R. at ¶ 22; Jt. Ex. 17, 19). Additionally, information concerning the purchase of equipment that was installed in the Salinas plant such as the ovens used to manufacture the Respondent's product and, in particular, information concerning the Respondent's suppliers, as well as the costs associated with the purchase of such equipment, is also deemed by the Respondent to be confidential and proprietary. The Respondent's negotiated pricing with its suppliers is the result of the goodwill and purchasing track record it has built with those suppliers over a period of years and would be of interest to any of the Respondent's competitors in relation to the market price they may pay for similar equipment. (R. at ¶ 22; Jt. Ex. 19). For these substantial and obvious reasons, the Respondent has proposed a confidentiality agreement under which it would release the information requested in the Union's January 27 information demand and has expressed its continued willingness to bargain over the form and content of such an agreement. (Jt. Exs. 16, 18, 21, 23, 27(g)).

D. The Subpoena in the Transfer of Work Grievance

While the Respondent and the Union exchanged correspondence concerning the Union's information demand, they also scheduled the transfer of work grievance to be heard in arbitration before Arbitrator Robert Steinberg on November 7-9, 2016. On October 24, 2016, the Union issued a *subpoena duces tecum* for the production of certain documents and information for the arbitration hearing. (Jt. Ex. 24). Many of the items set forth in the Union's subpoena are encompassed in the Union's January 27 information demand. (Jt. Ex. 24). The subpoena did not include a request for information regarding when and how the labor union in Salinas was selected. (Jt. Ex. 24). Among the requested documents in the Union's subpoena was the Salinas labor agreement —item 4 of the Union's January 27 information demand. (R. at ¶ 28; Jt. Ex. 24).

The Respondent filed a motion to quash the Union's subpoena. (R. at ¶ 29). In a conference call with the Arbitrator on November 4, 2016, the parties addressed the Respondent's motion to quash and certain objections to the subpoena. In briefing before the Arbitrator concerning the Respondent's motion to quash, the Union represented that it was no longer pursuing that part of the grievance alleging a violation of the anti-discrimination provision of the parties' CBA (Article 2, Section 5). (R. at ¶ 29). During the same call on November 4, 2016, the Arbitrator ruled that the Union's request for the Salinas labor agreement was irrelevant to the Union's grievance and therefore did not require the Respondent to produce it. (R. at ¶ 28; Jt. Ex. 24).

The Arbitrator further ruled during the November 4, 2016 conference call that the Respondent could produce for the Arbitrator's inspection the remaining documents required by the subpoena in redacted and un-redacted format in order to allow the Arbitrator to determine whether the Respondent's proposed redactions were appropriate. (R. at ¶ 31–32). The Arbitrator

further acknowledged that the Respondent and the Union would work on a confidentiality agreement to address the production of the subpoenaed documents that the Arbitrator ruled had to be produced. (R. at ¶ 31–32).

The hearing in the transfer of work grievance was postponed to dates in April 2017 to allow the parties to address the document production requirements of the Arbitrator's ruling. Those hearing dates were eventually postponed again to dates in September 2017 for the same reasons. (R. at ¶ 31–32). On June 5, 2017, the Union requested a postponement of the September hearing; the Arbitrator has now offered dates in October 2017. In the interim, pursuant to the direction outlined in the November 4, 2016 conference call on December 30, 2016, the Respondent sent to the Arbitrator the documents the Respondent wished to redact (in redacted and un-redacted formats). (Jt. Ex. 25). Also, on December 30, 2016, the Respondent sent the Union a draft confidentiality agreement for the documents associated with the arbitration. (R. at ¶ 34). Several communications have been exchanged by e-mail between December 30, 2016 to the present among the Union's attorneys, the Respondent's attorney, and the Arbitrator regarding the proposed confidentiality agreement and the arbitration. (Jt. Exs. 27(a)–27(lll)). The most recently exchanged confidentiality agreement defines confidential and proprietary information as including, *inter alia*: the purchase orders requested by the Union; documents showing the dates and locations of delivery of any and all equipment associated with the four new manufacturing lines; documents showing the number of employees working at the Respondent's Salinas plant; and documents showing the wage and benefits received by Salinas employees. (Jt. Ex. 27(qq)-(eee)). The Respondent and the Union have agreed to the terms of a confidentiality agreement for the arbitration matter. (Jt. Ex. 27, iii-lll). On June 5, 2017, the

Union returned executed copies of the confidentiality agreement; accordingly, the Respondent will be producing the above-referenced information.[4]

E. Transfer of Work Charge – Case 13-CA-165495

On December 4, 2015, the Union filed a charge in Case 13-CA-165495. (Jt. Ex. 28). On December 14, 2015, the Union filed an amended charge in Case 13-CA-165495 challenging the Respondent's transfer of work decision under Section 8(a)(3) of the NLRA. (Jt. Ex. 29). On October 4, 2016, the NLRB Regional Director for Region 13 issued a decision dismissing the charge, stating its investigation of the charge revealed the Respondent met its obligations under Section 8(a)(5) of the NLRA. (Jt. Ex. 30). The Regional Director also found that its investigation of the charge revealed no evidence that the Respondent's transfer of work was for discriminatory reasons. (Jt. Ex. 30). The Union appealed the dismissal to the NLRB Office of Appeals. The appeal was denied by the Office of Appeals on February 23, 2017. (Jt. Ex. 31). On March 8, 2017, the Union filed with the NLRB Office of Appeals a motion for reconsideration of the Office of Appeals' February 23, 2017 decision. The motion for reconsideration remains pending before the Office of Appeals. (Jt. Ex. 32).

IV. ARGUMENT

Critical to the understanding of the obligations to produce information in this case is the undisputed fact that the Union has sought the information at issue herein solely in relation to the grievance it filed on December 11, 2015. Indeed, the January 27, 2016 information demand itself states on its face that the request for information is "on the **transfer of work grievance**" (Jt. Ex. 9, emphasis added). Although there were vague references in subsequent Union communications to Section 8(a)(5) as well as the NAALC, the fact remains that nowhere in the

[4] Certain of these facts are not set forth in the stipulated record since they arose after its filing. However, these facts are submitted herein in response to the Judge's request in his May 3, 2017 ruling accepting the stipulation that he be apprised of the status of the arbitration hearing as well as the arbitral confidentiality agreement.

Union's correspondence was it ever made plain that the information it sought was for anything other than the transfer of work grievance. And it is through that prism, that the parties' communications and the Respondent's positions must be viewed and judged.[5]

In that light, the Respondent has met its obligations under Section 8(a)(5) of the NLRA in response to the Union's January 27 information demand by either providing the requested information, asserting legitimate objections thereto, or offering to produce certain requested information pursuant to a proposed confidentiality agreement. It is well established that the duty to supply information under the Act is not absolute. *See Detroit Edison Co. v. NLRB,* 440 U.S. 301, 303 (1979) ("the duty to bargain collectively, imposed by Section 8(a) of the NLRA, includes a duty to provide *relevant* information requested by the union for the proper performance of its duty as the employees' bargaining representative") (emphasis added). "The obligation to supply information is determined on a case-by-case basis, and it depends on a determination of whether the requested information is relevant and, if so, sufficiently important or needed to invoke a statutory obligation on the part of the other party to produce it." *Coca-Cola Bottling Co.*, 311 NLRB 424, 425 (1993). Despite the NLRB's broad discovery standard, a vague or speculative explanation for a request is insufficient to establish relevance and, consequently, insufficient to trigger an employer's duty to supply the requested information. *See*

[5] There is some hint that the Union will claim it needed certain elements of the information request to assist it in the investigation of its unfair labor practice charge in case 13-CA-165495. Such a claim is baseless if for no other reason than it is the General Counsel of the NLRB that has the primary responsibility for the investigation of unfair labor practice charges. Moreover, specific to this case, the Union's transfer of work ULP charge was investigated by Region 13 over a long period of time – nearly ten months – resulting in a dismissal. That charge overlapped with the instant case, which was pending investigation by the Regional office, for over seven months. The Region obviously believed it had all the relevant information it needed to make a determination in case 13-CA-165495 and that it did **not** need the information at issue in the present case to do so. The Region's decision to dismiss the charge was upheld by the NLRB Office of Appeals which apparently also felt the same way. Admittedly, the matter is pending with the Office of Appeals on the Union's motion for reconsideration which the Union is permitted to file as a matter of right pursuant to the NLRB's Rules and Regulations (see NLRB Rules and Regulations §102.19(c)). But there is certainly nothing to indicate from that fact alone that the information at issue in this case could be deemed relevant to the charge pending with the Office of Appeals, particularly given the long investigative history of that case.

Rice Growers Ass'n of Cal., 312 NLRB 837 (1993); *Disneyland Park*, 350 NLRB No. 88 (Sep. 13, 2007); *Soule Glass & Glazing Co. v. NLRB*, 652 F.2d 1055, 1099 (1st Cir. 1981).

If the Respondent "shows that it has a valid reason for not providing the requested information, the employer is excused from providing the information or from providing it in the form requested." *United Parcel Serv. of Am., Inc. & Int'l Bhd. of Teamsters, Local Union 373*, 362 NLRB No. 22 (Feb. 26, 2015). The employer must "articulate those concerns to the union and make a timely offer to cooperate with the union to reach a mutually acceptable accommodation. . . . [c]orrespondingly, where an employer fulfills those obligations, the union may not ignore the employer's concerns or refuse to discuss a possible accommodation, even when the requested information is presumptively relevant." *Id.*; *see East Tennessee Baptist Hospital v. NLRB,* 6 F.3d 1139 (6th Cir. 1993) (employer's offer to provide confidential information to a neutral third-party CPA was reasonable, because union failed to establish that its need for the information outweighed the employer's compromise offer); *Oil, Chemical and Atomic Workers v. NLRB,* 711 F.2d 348 (D.C. Cir. 1983).

While the Counsel for the General Counsel might argue that the Respondent violated the NLRA by unreasonably delaying the production of information, the record does not support such an allegation. *See Silver Bros. Co., Inc.*, 312 NLRB 1060, 1062 (1993) (finding the employer did not delay providing requested information in violation of the NLRA because the employer "was not automatically obligated to furnish the requested information forthwith, but instead was entitled to discuss confidentiality concerns regarding the information request with the Union so as to try to develop mutually agreeable protective conditions for its disclosure to the Union"). In this case, the Complaint contains no allegation that the Respondent engaged in delay and there is no evidence in the record to suggest that the Respondent engaged in such conduct. To the

contrary, the record is replete with evidence that: the Respondent articulated timely concerns to the Union's requests and, in doing so, proposed a confidentiality agreement; the parties negotiated and have since agreed on the terms of a confidentiality agreement in the transfer of work grievance which encompasses much of the information at issue in this charge; and, with the postponement of the arbitration to a date in October 2017, the Union has abundantly sufficient time to review the information in preparation for the arbitration.

A. The Respondent Provided Responses to the Information Requested in Items 1, 2, 3, 6 and 8 of the January 27 Information Demand

Through various communications with the Union, the Respondent provided the information requested in items 1, 2, 3, 6 and 8 of the January 27 information demand. In its February 17, 2016 letter, the Respondent provided a full response to item 1, identifying the employer of the Salinas workforce. Similarly, in that same response, it provided the answer to item number 8 as to when the production facilities were installed in Salinas (the Respondent clearly stated "that from August 2015 to December 11, 2015 the Company invested millions of dollars to construct and operationalize the four new lines of the future in Salinas"). Furthermore, in its May 31, 2016 letter, the Respondent provided answers to items 2 and 3, explaining that an exact number of employees to be utilized on the four new manufacturing lines at the Salinas plant could not be provided given the uncertainty in the quantity of production and the ability to transfer between manufacturing lines at the plant. The Respondent further responded by providing the date on which recruiting began and the hire date of the first employee hired to work on the new manufacturing lines in the Salinas plant. In its February 17, 2016 letter, the Respondent replied to the Union's request in item 6 by reference to an earlier communication with the Union (which it attached), providing the average hourly wage and total

compensation package for the Salinas hourly workforce. In sum, with respect to over half of the Union's demands the Respondent has provided the responsive information.

B. The Respondent Articulated Legitimate Objections to Items 4 and 5 of the Union's Information Demand

Where the Respondent did not provide a full response to a request in the Union's January 27 information demand, it articulated legitimate objections to such items on the basis of relevance and confidentiality. While it is undisputed that under current Board law the employer has a duty to provide relevant information requested by a bargaining representative for the lawful performance of its duties, including the handling of grievances, current Board law is also clear that the duty to provide information is limited by considerations of relevance. Indeed,

> A union's base assertion that it needs information to process a grievance does not automatically oblige the employer to supply all the information in the manner requested. The duty to supply information under §8(a)(5) turns upon "the circumstances of the particular case" . . . and much the same may be said for the type of disclosure that will satisfy that duty.

Detroit Edison Co. v. NLRB, 440 U.S. at 314. A broad or vague request will not trigger an employer's duty to supply the requested information. *Rice Growers Ass'n of Cal.*, 312 NLRB 837; *Disneyland Park*, 350 NLRB No. 88. To obtain other requested data, such as employer profits and production figures, a union must, by reference to the circumstances, "demonstrate more precisely the relevance of the data it desires." *Coca-Cola Bottling Co.,* 311 NLRB at 425.

Here, the Respondent's statutory obligation to provide information has not been triggered because the Union has failed to establish the relevance of the information in dispute. Initially, it should be noted that the Union's request for the Salinas labor agreement (as well as information related to the Salinas employees' terms and conditions of employment and how the Salinas labor union came into being) unquestionably dealt with non-unit employees. That is, the Union's request did not relate directly to the bargaining unit it represents. Those requests,

therefore, are not presumptively relevant to the Union's representational role. *See USPS,* 310 NLRB 701 (1993).

The Respondent, accordingly, could rightfully insist that the Union explain the relevance of those information demands. Despite Respondent's numerous requests for an explanation as to how the Salinas labor agreement and information on when and how the Salinas labor organization was selected is relevant to the transfer of work grievance, the Union has failed to provide an explanation sufficient to trigger the Respondent's duty to respond to the request. The Respondent first objected to the Union's request for the Salinas labor agreement in its February 17, 2016 letter to the Union, asserting the labor agreement was irrelevant to the provisions of the CBA cited in the transfer of work grievance. The Union's March 11 letter to the Respondent provided no explanation in response to the Respondent's concerns. Instead, the Union blankly alleged that it was entitled to that information in order to evaluate and process the pending transfer of work grievance without providing any rationale for the connection between those requests and the contractual provisions cited in the transfer of work grievance.

In its May 31, 2016 letter, the Respondent maintained its position that the Union failed to demonstrate how the existence of a Salinas labor agreement was relevant to any of the provisions of the parties' CBA to which the Union cited as the basis for the contract violation in its transfer of work grievance. The Respondent further noted that the Union's reliance on Article 39 (Successorship) of the CBA was misplaced as its language deals exclusively with the sale, lease, transfer or assignment of a manufacturing facility and not a transfer of bargaining unit work or a decision to invest which is at issue in the transfer of work grievance.

The Union itself has acknowledged that its information demand is irrelevant to Article 2 of the CBA. Before the Arbitrator in the transfer of work grievance, the Union has represented

that it was no longer pursuing that part of the grievance alleging a violation of the anti-discrimination provision of the parties' CBA (Article 2, Section 5). In addition, there is no evidence on record where the Union establishes the relevance of the request for the Salinas labor agreement to Articles 1 and 41 of the CBA.

Moreover, perhaps most telling of all, the Union's request for the Salinas labor agreement *has been deemed irrelevant by the Arbitrator* in the transfer of work grievance who in reaching that decision determined that he would not require the Respondent to produce a copy of the Salinas labor agreement. Thus, the very person the parties have entrusted the determination of the merits of the underlying grievance at issue in the General Counsel's information demand case, has already made the decision that the labor agreement simply has nothing to do with the grievance. What more could be said about the relevance of the Union's request when the adjudicator of the grievance has now deemed it out of bounds? No clearer guidance exists, the Respondent submits, as to the relevance of that document to the grievance at issue, thus demanding a dismissal of the General Counsel's complaint in this regard.

Such a conclusion is in line with the Board's determination in *Sinclair Ref. Co. (Houston, Tex.),* 145 NLRB 732, 733 (1963): There, the Board adopted the trial examiner's recommendation that the "complaint be dismissed in view of the fact that the parties had agreed to arbitrate the grievances at issue and had selected the arbitrator; that the Respondent expressed its willingness to supply any data the arbitrator ruled was necessary; that the Respondent did furnish data in accord with the rulings of the arbitrator; and that the arbitration hearings on the grievances in question were completed before the instant case came on for hearing before the Trial Examiner." *Id.* As explained by the Trial Examiner, "there is a persuasive practical and equitable logic for concluding that parties, who have contractually provided for arbitration and

who have in a particular case followed the procedures of the contract and have in the same case approved and agreed on arbitration as the means of resolving their disagreement, should proceed to do this very thing..." *Id.* at 743. The Trial Examiner further explained that "having arrived at the arbitration stage, the parties should refer to the arbitrator problems of procedure and evidence, and those matters were the concern of the arbitrator and no one else." *Id.* The Trial Examiner went on to state that "[t]here should be no underestimation of what the parties had ceded to the arbitrator when they placed an arbitration clause in their contract .... vest[ing] decisional power in a third party." *Id.* at 746. The Trial Examiner explained that if the Board did not wish to impede on this process, but instead facilitate it, this is accomplished by not intervening in the circumstances presented by the instant case. When situations arise, as here, where the parties cannot agree, the Respondent submits that it is the arbitrator who should resolve such disputes. In respect to the question of the relevancy of the labor agreement, the Arbitrator has done so. The NLRB should now respect that determination.

Similarly, the Union has failed to show how information on when and how the Salinas labor organization was selected is relevant to the transfer of work grievance for which it purportedly seeks such information. Notably, that request was **not** made in the Union's subpoena to the Arbitrator. It is hard to imagine much more compelling evidence that such information is not relevant when the Union itself has abandoned its own efforts to get that information!

The only basis for its claim, moreover, was in its remarkable assertion that it needed the information in order to determine the Company's compliance with the NAFTA and its side agreement, the NAALC, both of which are outside the realm of the NLRA and its jurisdiction. Indeed, allegations that the NAALC has been violated are subject to an entirely separate

investigatory process within the exclusive province of the United States Department of Labor, a point the Respondent made in its May 31, 2016 response and which the Union did not deny. That this request was irrelevant to the issues under consideration was further underscored by the fact that, ultimately, the Union's submission to the Department of Labor's Office of Trade and Labor Affairs claiming a violation of the NAALC was denied review by that OTLA. (Jt. Ex. 15).

Thus, nowhere has the Union ever established how information regarding when and how the Salinas labor organization was selected is relevant to any of the provisions of the CBA at issue in the transfer of work grievance. Absent a more precise statement on the relevance of the above information, and given that the Union is no longer seeking that information through its arbitral subpoena, it should be easily concluded that the Respondent has not violated the NLRA by objecting to the production of such information.

C. The Respondent Appropriately Offered to Produce the Remaining Requested Information Pursuant to a Proposed Confidentiality Agreement

With respect to information that is ostensibly relevant but which an employer claims is confidential and proprietary, an employer complies with the requirements of Section 8(a)(5) of the NLRA by offering to discuss in good faith a confidentiality agreement through which it would release such information. As noted above, Board law states that where an employer has provided a legitimate reason for not providing the requested information, the employer is excused from providing the information or from providing it in the form requested. *United Parcel Serv. of Am., Inc.*, 362 NLRB No. 22 (finding the employer did not violate the NLRA when it timely asserted its concerns with information requests and attempted to reach an accommodation with the union but the union never indicated why the employer's proposals would not satisfy its needs) (citing *American Cyanamid*, 129 NLRB 683, 684 (1960); *Good Life*

Beverage Co., 312 NLRB 1060, 1062 (1993); and *Century Air Freight*, 284 NLRB 730, 734-735 (1987)). The Board recognizes that certain proprietary information is confidential. *See, e.g., Detroit Newspaper Agency*, 317 NLRB 1071, 1073 (1995). In this case, the Respondent has established that it has an unmistakable proprietary interest in preserving the confidentiality of information related to, and documents showing, the wage and benefits received by the Salinas workforce as well as information regarding the number of employees in Salinas and when and how the Salinas labor organization was selected particularly where, as here, the party seeking the information represents a number of the Respondent's competitors. The wages, benefits, conditions of employment, methods of production and the process by which the Salinas union was recognized may be of interest to the Respondent's competitors, particularly for any one of those competitors that may be seeking to open a manufacturing facility in Mexico. The Respondent has further established that information concerning the purchase of equipment that was installed in the Salinas plant such as the ovens used to manufacture the Respondent's product is also deemed by the Respondent to be highly confidential and proprietary. The Union has not questioned the Respondent's assertion, and indeed, throughout its communications starting in June 2016 it entertained the proposal to enter into a confidentiality agreement.

To the extent possible (such as not to jeopardize its confidentiality and proprietary interests), the Respondent has provided responsive information to the Union's January 27 information demand. Specifically, with respect to item 7, the Respondent has provided partial responses including the date on which the Respondent began purchasing the equipment for the four new manufacturing lines in Salinas and has provided that the equipment was kept in storage until the placement decision was made. The Respondent objected to the production of the purchase orders for the equipment after articulating its confidentiality concerns and offering to

discuss a confidentiality agreement. Notably, this information (including information regarding the number of employees working at the Respondent's Salinas plant and information regarding the wage and benefits received by Salinas employees) will be produced under the auspices of a confidentiality agreement between the parties in the transfer of work grievance. Here, since about August 9, 2016 to the present, the Respondent has complied with the NLRA by engaging the Union in discussions over the terms of a confidentiality agreement under which the Respondent would release certain information requested in the January 27 information demand. The parties have actually reached an agreement on a confidentiality agreement in the arbitration which covers most of the areas in dispute. This fact should now end the inquiry as to the Respondent's compliance with its NLRA obligations. It has met them – plain and simple. The Complaint, therefore, should be dismissed for this additional reason as well.

V. PROTECTIVE ORDER

In the event, however, that the Administrative Law Judge orders that information that the Respondent has deemed to be confidential nonetheless be produced, the Respondent hereby renews its earlier motion for a protective order (attached hereto as Exhibit A) in accordance with the Judge's March 1, 2017 Order permitting the Respondent to present additional facts and argument in the proceedings (which are now set forth in the record) to establish the need for confidentiality or a protective order.[6] In the alternative, the Respondent asks that the Judge require the Union to agree to expand the confidentiality agreement executed in the transfer of work grievance to include the information at issue in this charge or, further in the alternative, to order the Union to bargain over the terms of a confidentiality agreement in this matter.

[6] Inasmuch as the Judge has not made a determination that the Respondent must furnish the requested information, such a motion for a protective order is premature. Respondent, therefore, requests that the Judge permit such a filing following the issuance of his decision in the event he orders the production of information the Respondent has identified as confidential.

VI. CONCLUSION

For the foregoing reasons, the Respondent asks the Administrative Law Judge to dismiss the Complaint in its entirety. The Respondent has provided the Union with information in response to some of its requests while with respect to others the Respondent has either lawfully objected to the relevance of the information requested or lawfully sought to bargain over an appropriate confidentiality agreement with the Union.

DATED this 7th day of June, 2017

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

By _____

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Norma Manjarrez, Esq.
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Phone: (312) 558-1220
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 7th of June 2017, the foregoing **RESPONDENT'S BRIEF TO THE ADMINISTRATIVE LAW JUDGE** was filed electronically through the NLRB's E-Filing system, and one copy was served by e-mail upon:

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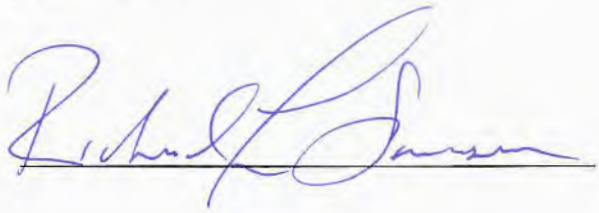

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

MONDELĒZ GLOBAL, LLC

and Cases 13-CA-170125

BAKERY, CONFECTIONERY, TOBACCO WORKERS & GRAIN MILLERS LOCAL UNION NO. 300, AFL-CIO-CLC

MOTION TO ACCEPT RESPONDENT'S PROPOSED SETTLEMENT AGREEMENT OR IN THE ALTERNATIVE MOTION FOR PROTECTIVE ORDER

Respondent MONDELĒZ GLOBAL, LLC ("MG" or the "Respondent"), by its attorneys, hereby respectfully moves for an Order accepting Respondent's settlement proposal, or, in the alternative, for a Protective Order prohibiting the disclosure of certain documents in accordance with the proposal that follows. For its Motion to Accept Respondent's Settlement Agreement or in the Alternative Motion for Protective Order, MG states as follows:

I. INTRODUCTION AND PROCEDURAL HISTORY

MG is party to a labor agreement with the Bakery, Confectionary, Tobacco Workers & Grain Millers, Local Union No. 300, AFL-CIO, CLC (the "Union") which covers a bargaining unit of employees at the Respondent's Chicago Bakery. This case concerns the Union's allegation that the Respondent has violated Section 8(a)(5) of the National Labor Relations Act "by failing to furnish information requested by the Union." The information request at issue was set forth in a letter dated January 27, 2016 and arose out of a grievance filed by the Union against the Respondent on December 11, 2015 alleging that Respondent's decision to invest in four new manufacturing lines in its Salinas, Mexico plant was in violation of the parties' labor agreement

EXHIBIT A

("the transfer of work grievance" or "Grievance 15-12/1").[1] In its January 27 letter, the Union requested the following information:

1. Who is the "Employer" for the Salinas workers?
2. How many employees will be utilized at the Salinas operation to perform the Local bargaining unit work which the company intends to transfer?
3. Have any of those employees been hired, and, if so, when were they hired and the number of such employees?
4. Are the employees who will be performing the transferred bargaining unit work covered by a collective bargaining agreement; and, if so, the Union requests a copy of the agreement.
5. Are the employees who will be performing the transferred bargaining unit represented by a labor organization in connection with their hours, wages and working conditions and if so was the labor organization selected by the employees? If the labor organization was selected by the employees when and how did that occur. If the employees did not participate in the selection of the labor organization when and how was the selection made? If there is a labor organization in place, has the Mexican government certified the organization as the representative of the employees and if so, the Union requests a copy of the certification?
6. What is or will be the hourly wage and benefits, if any, of the Salinas employees who will be performing the transferred bargaining unit work function?
7. When were the production facilities to be used for the production of the transferred bargaining unit work ordered from the suppliers? The Union requests copies of the orders.
8. When were the production facilities installed or will be installed at the Salinas site?

Over the course of the following several months the parties exchanged correspondence concerning this request. The Respondent provided answers to some of the demands and objected to others as irrelevant to the issues under consideration in the transfer of work grievance. The Union has also pursued its grievance to arbitration and has subpoenaed documents in support of its claim. Among the requested documents in the Union's subpoena was the collective bargaining agreement applicable to the Salinas employees —item number 4 of the Union's January 27

[1] This investment decision and the bargaining associated with it is the subject of a separate unfair labor practice charge (case 13-CA-165495) which was dismissed on October 4, 2016 by Region 13. The Union's appeal of that dismissal is currently pending before the Office of Appeals of the General Counsel of the National Labor Relations Board.

information demand. The Arbitrator has ruled, however, that the collective bargaining agreement is not relevant to the Union's grievance and has not required the Company to produce it. Many of the items set forth in the Union's subpoena are encompassed in the Union's January 27 information demand. The information responsive to that part of the subpoena enforced by the Arbitrator is also being produced pursuant to a confidentiality agreement (the most current version of which is attached as Exhibit A to this motion). As of this writing a final agreed upon version of the confidentiality agreement has not been executed by the parties.

The Union filed a charge in Case 13-CA-170125 dated February 19, 2016 alleging the Respondent refused to furnish information in violation of Section 8(a)(5) of the Act. Thereafter, in October 2016, the Regional Director issued an Order Consolidating that case with two separate charges, 13-CA-176539, and 13-CA-177235, along with a Consolidated Complaint and Notice of Hearing. The parties have settled the charges in the latter two cases, leaving only the information request case (13-CA-170125) for hearing which is scheduled for February 9, 2017. Specific to that charge, the General Counsel's complaint asks that the Respondent furnish the Union with the information responsive to items 2-8 of the January 27, 2016 request.

THE TERMS OF THE SETTLEMENT PROPOSAL

Counsel for the General Counsel along with Respondent and Union counsel have communicated regarding the possibility of settling the information demand charge. The Respondent is willing to provide the information requested by the Union that is the subject of the charge (items 2-8) pursuant to the same terms as set forth in the confidentiality agreement applicable to the arbitration. The Respondent's willingness to provide the information specifically responsive to items 4 and 5 was confirmed in a letter sent to Union counsel on February 6, 2017 (Exhibit B attached hereto). The Respondent is also amenable to the other

terms of a typical Board informal settlement including a notice posting requirement.[2] The Union, however, has rejected this proposal taking the position that information supplied in response to items 4 and 5 not be covered by any confidentiality pledge. The Respondent understands that the Union takes no issue with including all the other requested items of its January 27 request within the confines of a confidentiality agreement.

It cannot be disputed that the Respondent has an important proprietary interest in preserving the confidentiality of documents showing the wage and benefits received by the employees working at the Respondent's Salinas plant as well as information regarding how the union in Salinas was selected. This information is kept confidential by the Respondent. As a leading competitor in the confectionary, food, and beverage industry, information revealing the processes and tactics through which the Respondent negotiates and the terms to which it is willing to agree jeopardizes its competitive advantage and erodes its negotiating power. Moreover, the Union and its International Union represents a number of the Respondent's competitors who certainly would be interested in knowing about MG's labor relations strategies and wage and benefit structures, whether in the United States or in other countries such as Mexico.

Significantly, the Union has provided no reason for demanding this information outside of a confidentiality agreement. The Respondent, as expressed in the proposed confidentiality agreement, has agreed to produce this information for use "in any arbitration or subsequent action to review or vacate the arbitration award, or in any unfair labor practice proceeding before any branch of the National Labor Relations Board, provided that the Union and the Arbitrator agree that the Confidential documents shall be subject to a protective order and not be disclosed

[2] The Respondent also would seek a non-admissions clause similar to the settlement reached in cases 13-CA-176539 and 13-CA-177235. The presence of a non-admissions clause does not preclude a finding that the settlement provides for full relief. *See USPS, infra,* at 3 n. 9.

outside of said proceedings." Use of the requested information beyond these parameters undermines the Act's purposes and policies aimed at promoting and maintaining industrial harmony.

While Counsel for the General Counsel cannot approve the settlement agreement on the terms proposed by the Respondent, it is Respondent's understanding that if the Union were amenable to a confidentiality agreement, Counsel for the General Counsel would find such a resolution of the charge acceptable. Indeed, Counsel for the General Counsel has stated that an addendum to the settlement agreement stating "*The Union and the Employer have entered into a side confidentiality agreement with regard to the information requested*" would be acceptable.

THE SETTLEMENT IS CONSISTENT WITH BOARD PRECEDENT

The acceptance of a settlement agreement incorporating a confidentiality agreement in this case is consistent with the considerations set forth in *Independent Stave*, 287 NLRB 740 (1987). Under *Independent Stave*, the Board will "evaluate the settlement in light of all factors present in the case to determine whether it will effectuate the purposes and policies of the Act..." *Indep. Stave Co.*, 287 NLRB 740, 743 (1987). "[T]he Board has from the very beginning encouraged compromises and settlements. The purpose of such attempted settlements has been to end labor disputes, and so far as possible to extinguish all the elements giving rise to them." NLRB BENCH BOOK § 9-100 (2016) (citing *Wallace Corp. v. NLRB*, 323 U.S. 248, 253–254 (1944)).

In order to assess whether the purposes and policies underlying the Act would be effectuated by approving the agreement, the Board will examine all the surrounding circumstances including, but not limited to: (1) whether the charging party(ies), the respondent(s), and any of the individual discriminatee(s) have agreed to be bound, and the position taken by the General Counsel regarding the settlement; (2) whether the settlement is

reasonable in light of the nature of the violations alleged, the risks inherent in litigation, and the stage of the litigation; (3) whether there has been any fraud, coercion, or duress by any of the parties in reaching the settlement; and (4) whether the respondent has engaged in a history of violations of the Act or has breached previous settlement agreements resolving unfair labor practice disputes. *Indep. Stave Co.*, 287 NLRB at 743. The Board has applied the *Independent Stave* factors to both informal and formal settlements. NLRB BENCH BOOK § 9-430 (2016) (citing *Woodworkers Local 3–433 (Kimtruss Corp.)*, 304 NLRB 1, 2 (1991) (upholding judge's approval of post hearing settlement of Section 8(b) allegations against the respondent union over the objections of the respondent employer in the companion Section 8(a) case); and *KW Electric Inc.*, 327 NLRB 70 (1998) (approving formal settlement over charging party's objection after judge's decision issued).

Here, the Respondent has agreed to be bound to a settlement that would fully effectuate the purposes and policies of the Act. In fact, counsel for the General Counsel would otherwise have no argument with incorporating a confidentiality agreement into the settlement (albeit in an addendum) if the Union were otherwise so inclined to agree to a confidentiality requirement. In fact, the settlement terms are nearly identical to those originally offered by the Counsel for the General Counsel with the exception of the language referencing the confidentiality agreement. The Respondent has offered sound reasons as to why it cannot agree to exclude the labor agreement covering Salinas workers and information related to how the union in Salinas was selected from the scope of a confidentiality agreement. Moreover, Respondent's proposal is reasonable in light of the alleged violations, risks of litigation, and the stage at which this litigation currently sits. As noted above, the Parties have entered into an informal Board agreement regarding two of the three consolidated cases (Cases 13-CA-176539 and 13-CA-

177235) and the remaining case involves one allegation that Respondent has not provided the Union certain information including information (the Salinas collective bargaining agreement) that the arbitrator has deemed irrelevant to the grievance. Expenditure of the Board's resources for a trial to litigate the potential existence of one violation concerning the disclosure of information that the Respondent has agreed to produce subject to a confidentiality agreement that does not restrict the Union from using the information in any arbitration or unfair labor practice proceeding provided the information is kept confidential is, frankly, a waste of resources. In addition, there is absolutely no evidence of fraud, coercion or duress. And, finally, the Respondent has no history of either violating or breaching settlement agreements. In light of these factors, the circumstances of this matter strongly favor acceptance of the Respondent's proposed settlement language.

The Board's recent decision in *United States Postal Service*, 364 NLRB No. 116 (August 27, 2016), addressing the *Independent Stave* requirements, does not change this analysis. There, the Board said that a judge should only approve a respondent's proposed consent order "if it provides a full remedy for all of the violations alleged in the complaint." *USPS supra, slip op. at* 4. The Board further said that the judge should "ask whether the proposed order includes all the relief that the aggrieved party would receive under the Board's established remedial practices were the case successfully litigated by the General Counsel to conclusion before the Board." *Id.*

Here, the Respondent's proposed settlement gives the Union everything it could hope to achieve through litigation of this case —full access to the information it has requested in its January 27 information demand and its full use of the information in the arbitral as well as unfair labor practice forums. The Union's refusal to abide by a confidentiality pledge only raises questions as to how it wishes to use the information at issue. The only logical conclusion in that regard is that the Union wishes to use the information, as its counsel has stated, in its public

relations campaign against the Respondent and to harm MG's legitimate proprietary interests. The use of such information in that fashion, however, is not consistent with nor required by the Union's statutory representational responsibilities. To the contrary, its apparent desire to use the information punitively is beyond the bounds of what Section 8(a)(5) mandates and is directly contrary to the achievement of industrial peace, the hallmark of the Act.

PROTECTIVE ORDER

However, should the Administrative Law Judge not accept the Respondent's settlement proposal and after hearing the matter[3] direct the Respondent to disclose all items of the Union's January 27 information demand, the Respondent respectfully requests the Administrative Law Judge issue an order placing items 2-8 of the January 27 information demand under seal pursuant to a protective order directing that said information not be publicly disclosed and limiting the use of these items by the Parties and Counsel for the Parties to use in the arbitral and unfair labor practice forums. As detailed above, a protective order is critical to the Respondent's proprietary interest in preserving the confidentiality of documents showing the wage and benefits received by the employees working at the Respondent's Salinas plant as well as information regarding how the union in Salinas was selected particularly here where the Union and its International Union represent a number of Respondent's competitors. Granting Respondent's motion for a protective order would only further the purposes of the Act and is consistent with the Board's policy encouraging the mutually satisfactory resolution of issues as effectuating the purposes and policies of the National Labor Relations Act.

CONCLUSION

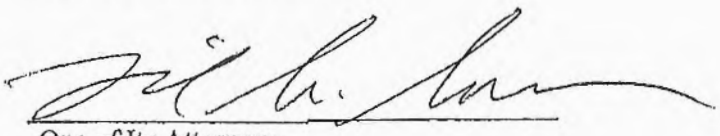
For the reasons set forth above, Respondent's proposed settlement agreement should be accepted or, alternatively, a protective order should be granted prohibiting disclosure of items 2-

[3] As discussed among the parties and the Administrative Law Judge, the parties have agreed to present this case on a stipulated record.

8 of the January 27 information demand to the general public and limiting their use to the arbitral and unfair labor practice forums.

Respectfully submitted,

MONDELĒZ GLOBAL LLC

By: 

One of Its Attorneys

Richard L. Samson
OGLETREE, DEAKINS, NASH, SMOAK & STEWART
155 North Wacker Drive, Suite 4300
Chicago, IL 60606
(312) 558-1229

Dated: February 8, 2017

MEMORANDUM OF AGREEMENT CONCERNING DISCLOSURE OF INFORMATION IN CONNECTION WITH GRIEVANCE 15-12/1

WHEREAS the Bakery, Confectionery, Tobacco Workers And Grain Millers International Union and its Local 300 (hereinafter collectively and individually the "Union") has requested production of certain documents and information in connection with Grievance 15-12/1 (the "Grievance") filed on December 11, 2015 concerning the Company's decision to place the investment in four new manufacturing lines in Salinas, Mexico also known as Project Sunrise;

WHEREAS the Company asserts that certain documents and information requested by the Union are of a confidential and proprietary nature;

WHEREAS the Company asserts that documents and information requested by the Union, if disclosed, would be harmful to the Company's business interests;

WHEREAS the parties wish to facilitate the Union's access to this information without harming the Company's business interests;

WHEREAS the Union has agreed to execute this Memorandum of Agreement Concerning Disclosure of Information In Connection with the Grievance (hereinafter "Agreement") with respect to the confidential and proprietary documents and information (as such term is hereinafter defined) provided to it by the Company in connection with the Union's request for information to ensure that such information is not misused or disclosed to third parties (except as hereinafter provided) to the detriment of the Company's business interest;

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, **IT IS HEREBY AGREED** that the following rules will apply to the

EXHIBIT A

disclosure and use of the confidential and proprietary documents and information requested by the Union:

1. "Confidential and proprietary documents and information" (hereinafter "Confidential documents") shall include any and all documents and/or other information produced to the Union including but not limited to (1) the Purchase Orders requested by the Union, as well as information related to the cost of the equipment purchased by the Company in connection with Project Sunrise, the time period for delivery of same and any other information that may reveal the Company's finances or costs, the Company's operations, or the Company's product costs; (2) documents showing the dates and locations of delivery of any and all equipment associated with Project Sunrise; (3) documents showing the number of employees working at the Company's Salinas, Mexico plant; and (43) documents showing the wage and benefits received by the employees working at the Company's Salinas, Mexico plant. All documents and information subject to the terms of this Agreement shall be so designated as "Confidential" by the Company prior to production to the Union.

2. Access to the Confidential documents will be limited to the individuals listed below, provided however, that each such individual shall have first agreed to be bound by the provisions of this Agreement and shall have executed a statement to that effect in the form of Exhibit A, attached to this Agreement. The Company and the Union may, by mutual agreement in writing, agree to add additional individuals to the group listed below. The Union agrees to be reasonable in its requests to add individuals to such group, and the Company agrees to be reasonable in considering such requests.

David Durkee, International Union President

Ron Baker, International Union Representative

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Jethro Head, International Union Representative

Ed Burpo, Local 300

Don Haynes, Local 300

3. In no event shall any documents that, in the Company's opinion, contain confidential information be copied, duplicated, transcribed, delivered, or made available to any person or entity other than the individuals listed in, or added to, Paragraph 2. Nothing herein is intended to limit the use of the Confidential documents in any arbitration or subsequent action to review or vacate the arbitration award, or in any unfair labor practice proceeding before any branch of the National Labor Relations Board, provided that the Union and the Arbitrator agree that the Confidential documents shall be subject to a protective order and not be disclosed outside of said proceedings.

4. The Company, at its option, may also have its counsel present during inspection and disclosure of documents.

5. Within thirty (30) days after the decision is rendered in any arbitration convened for Grievance 15-12/1 or after the Union withdraws the Grievance(s) or after it is settled, or after the relevant unfair labor practice proceedings before the National Labor Relations Board and any appeals of such proceedings end, whichever is applicable, provided there is no suit to review or vacate (in which case these terms shall be applicable at the conclusion of such legal proceedings), the Union and all individuals receiving the aforementioned documentation or information shall return all documentation provided by the Company marked or otherwise designated as confidential to the Company along with all copies, duplicates, or transcriptions thereof. In addition, the Union shall certify to the Company that all documents, memoranda, or material prepared by the Union or the receiving individuals containing, restating, or

paraphrasing, or purporting to restate or paraphrase, any of the confidential information have been destroyed, and that this Agreement has been fully complied with.

6. The Union agrees that a breach of this Agreement will give rise to irreparable injury to the Company that cannot be compensated for adequately by damages. Consequently, the Company shall be entitled, in addition to all other remedies available, to injunctive and other equitable relief to prevent a breach of this Agreement and to secure the enforcement of this Agreement in any court of competent jurisdiction in the United States or any state thereof (and the Union agrees to waive any requirement for the posting of bond in connection with such remedy).

The undersigned accept the foregoing terms and agree that this constitutes a binding agreement between the Company and the Union with respect to the matters set forth above.

The Bakery, Confectionery, Tobacco Workers And Grain Millers International Union	Mondelēz Global LLC
By: _____	_____
Dated: _____, 2017	Dated: _____, 2017

EXHIBIT A

The undersigned certifies that he or she will fully comply with the Memorandum of Agreement Concerning Disclosure of Information in Connection with the December 11, 2015 Work Transfer Grievance executed by the Bakery, Confectionery, Tobacco Workers And Grain Millers International Union and its Local 300 and Mondelēz Global, Inc. and attached hereto.

David Durkee

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Jethro Head

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Ron Baker

Ed Burpo

Don Haynes

Ogletree
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February 6, 2017

Via email gcornfield@cornfieldandfeldman.com and Regular Mail
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RE: BCTGM Local 300 and Mondelēz Global LLC
Case 13-CA-17125

Dear Gil:

In relation to items 4 and 5 of the Union's January 27, 2016 information request, and based on our last discussion with the ALJ, it is my understanding that the Union does not need the information for its pending grievance, but needs it to assist the Union with its unfair labor practice charge in case 13-CA-165495 currently pending before the NLRB's Office of Appeals. The Company does not believe the information requested is relevant to the Union's representational role or that such a request is appropriate since the responsibility for the investigation of the ULP charge rests exclusively with the General Counsel of the NLRB. Without waiving this objection, however, this will confirm the position we've relayed previously, that the Company is willing to produce the information responsive to those items provided the Union agrees to maintain the confidentiality of the information pursuant to the same terms set forth in the confidentiality agreement previously exchanged between the parties. We remain open to negotiating that proposal. To that end, I had hoped we could have had discussion between our two clients as we previously discussed to move that process along but I now understand, based on your email of February 4, 2017, that is not possible. If your client changes its mind, please advise.

Thank you for your efforts and consideration.

Very truly yours,

Richard L. Samson

EXHIBIT B

RLS:mal

28605943.031910-000243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 8th day of February 2017 the foregoing **MOTION TO ACCEPT RESPONDENT'S PROPOSED SETTLEMENT AGREEMENT OR IN THE ALTERNATIVE MOTION FOR PROTECTIVE ORDER** was filed electronically through the Board's E-Filing System, and was served by electronic mail and by regular U.S. Mail upon:

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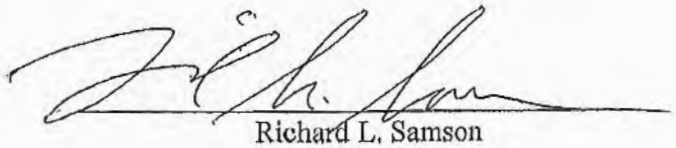

Richard L. Samson

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